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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 02 2009

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a geoscientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner argues that his familiarity with Venezuela's petroleum industry is of special value to the United States.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on September 20, 2006, about four weeks after his August 23, 2006 arrival in the United States as a B-2 visitor for business. The petitioner claims to have worked as an independent consultant since he left [redacted]) in May 2006.

Much of the petitioner's initial submission established his credentials as a geoscientist in Venezuela's petroleum industry. The petitioner also submitted several witness letters with the petition. Some of the letters were newly written to support the petition; others predate the petition by some time and appear to be generic recommendation letters of the type normally presented to a prospective employer. In a letter

dated August 14, 2006, manager of Geology and Geophysics at [redacted] (where the petitioner worked from June 2002 to April 2003), stated:

> [The petitioner] is one of few geoscientists who combine considerable experience in both geology and geophysics, integrating geology and seismic interpretation. He was trained largely in the United States and his expertise is applicable worldwide; however, he has a profound knowledge of the Venezuelan petroleum basins, and is being considered a leading expert on the prolific Maracaibo Basin, where he used seismic records for the interpretation of the regional geology.
>
> While at [redacted] the petitioner] provided, as team leader and technical advisor, operational support and he worked on field evaluations and regional studies. In particular, he constructed a new, integrated geological-geophysical model of our Copa Macoya gas field, which led to the successful drilling of several wells and the addition of new reserves. He also started a multidisciplinary regional project for which T[redacted] contracted Stanford University. . . .
>
> [The petitioner's] expertise regarding the integration of geology and seismic data has produced significant financial benefits to the Venezuelan oil industry, especially during the last ten years while he was working as a consultant.

In a March 31, 2006 letter, integrated studies coordinator for [redacted] Business District, stated:

> [The petitioner] is working with me at [redacted] . . as a Geoscience Asses[s]or. . . .
>
> He is an expert in needs analysis, project management, basin analysis, seismic interpretation and geological and geophysical integration and geoscience instruction. Relevant contributions include deep Eocene appraisal plan with a reserve growth poten[t]ial of 100 million bbl of crude oil.

[redacted] "Geology Org. Manager" of the [redacted], stated in a translated December 8, 1993 letter:

> It is our opinion, that [the petitioner], from a technical point of view, is a highly qualified professional of proven efficiency and responsibility, shown in every activity developed for [redacted] which have been demonstrated on the occasions of his selection as Consulting Geophysicist to carry out a Seismic Interpretation Project in the Urdaneta Area-West of Maracaibo Lake, and for his excellent cooperation in training our personnel.

The letters and other documents submitted with the initial filing establish that the petitioner is a well-qualified professional in his field, but they do not establish that the petitioner stands apart from others in that field to an extent that would warrant the special benefit of a national interest waiver.

On December 19, 2007, the director issued a request for evidence to establish that the petitioner has "a past record of specific prior achievement that justifies projections of future benefit to the national interest." In response, the petitioner stated:

> During my thirty years of experience as a geoscientist I have developed expertise in creating significant oil and gas projects that have yielded important results with major economic outcomes. Furthermore my experience has given me the ability to instruct and mentor other individuals in my field. . . .
>
> My experience in the petroleum geosciences field has been focused on the Venezuelan Oil Industry. As a consultant I have held crucial positions such as senior technical advisor for [redacted] . . . I possess the ability to examine the potential of a Sedimentary Basin for Oil and Gas Commercial Accumulations using seismic data integrated to geological data in record time to influence significantly major investment decisions. My experience as an outstanding geoscientist is applicable worldwide, and would be able to obtain the same successful outcomes as it did in Venezuela. . . .
>
> If given the national interest waiver, I would be able to create and coordinate such projects, that would bring long term and large scale benefits to the United States.

The petitioner submitted copies of electronic mail messages to demonstrate his active consulting business, but no objective evidence to establish that the petitioner's work was of greater significance than that of other consultants in his field.

The director denied the petition on April 9, 2008, stating that the petitioner had not submitted evidence that would establish his eligibility for the waiver. On appeal, the petitioner notes "the oil and gas crisis that the United States is currently facing," an observation that relates to his field as a whole rather than to him in particular. The petitioner states that his experience in the Venezuelan oil industry is especially valuable "because Venezuela holds one of the greatest oil reserves in the world." This argument also appears to be very general, applying to every Venezuelan in the petitioner's field. The petitioner claims that his "specific expertise in the Venezuelan oil industry is unique to the American labor force," the apparent argument being that he should receive a waiver because he gained most of his experience in Venezuela.

We do not dispute that the petitioner has had extensive experience in his field, or that Venezuela is an important oil-producing nation. The petitioner, even so, has not persuasively explained how his familiarity with Venezuela's oil industry would benefit the United States, nor has he shown that he, in

particular, stands out from other Venezuelan geoscientists with similar experience. He has simply asserted that, as an experienced Venezuelan geoscientist, he should qualify for the waiver.

USCIS has already held that it will not establish blanket waivers for entire fields of specialization. *See Matter of New York State Dept. of Transportation* at 217. The same logic prevents us from giving automatic preference to aliens from certain countries, at the expense of their peers in other countries. We note that many countries other than Venezuela also sell petroleum to the United States; the petitioner's reasoning demands that similar preferential treatment be extended to Canadians, Saudi Arabians, and so forth.

With respect to the petitioner's decades of experience, an alien's length of experience can be part – but not all – of a successful claim of exceptional ability, pursuant to 8 C.F.R. § 204.5(k)(ii)(B). Because aliens of exceptional ability are, by statute, normally subject to the job offer requirement, we cannot find that partial evidence of exceptional ability strongly supports a national interest waiver claim.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.